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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 927. 577 ~~279~~ 27

THE WESTERN UNION TELEGRAPH COMPANY ET AL., APPELLANTS,

vs.

THE BALTIMORE AND OHIO TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED SEPTEMBER 3, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house in the city of Indianapolis, in said district, on the first Tuesday in May, in the year of our Lord one thousand eight hundred and eighty-five, before the Honorable William A. Woods, judge of the district court of the United States for said district and *ex officio* judge of said circuit court:

THE WESTERN UNION TELEGRAPH COMPANY and The Union Railroad Transfer and Stock Yard Company, now known by the name and style of The Belt Railroad and Stock Yard Company,
vs.
THE BALTIMORE AND OHIO TELEGRAPH COMPANY. } Chancery. 7893.

Be it remembered that heretofore, to wit, at the November term of said court, on the 17th day of December, 1884, before the Honorable William A. Woods, judge as aforesaid, the following proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Mess. McDonald, Butler, and Mason, their solicitors, and file their bill of complaint in the above-
2 entitled cause in the words following, to wit:

Humbly complaining, your orators, the Western Union Telegraph Company and the Union Railroad Transfer and Stock Yard Company, now known by the name and style of the Belt Railroad and Stock Yard Company, show unto your honor:

That The Western Union Telegraph Company is a corporation duly created and organized and existing under the laws of the State of New York, and is a citizen of the State of New York, and The Union Railroad Transfer and Stock Yard Company, known by the name and description of The Belt Railroad and Stock Yard Company, is a corporation duly organized and existing under the laws of the State of Indiana, and is a citizen of the State of Indiana, and The Baltimore and Ohio Telegraph Company is, as your orators charge, a corporation organized and existing under the laws of the State of Maryland, and a citizen of said State of Maryland.

Your orators further show that the said Western Union Telegraph Company, at the time hereinafter mentioned and long before that time, had been, and was then, engaged in the State of Indiana in the business of telegraphy, and had established and were then engaged in the operation of numerous lines of telegraph extending throughout the said State of Indiana and connecting with its system of telegraph lines throughout the United States, and the said Union Railroad Transfer and Stock Yard
3 Company, being then an organized corporation, created and organized for the purpose of constructing railroad lines or connections for the transfer of freight to and from railroads centering in and passing through the city of Indianapolis, and the lines of said road extending around the said city of Indianapolis, so as to connect all the roads so centering at said city, and forming a continuous line of about fifteen miles, and also for the establishment,

operation, and maintenance of stock yards at or near said city for the purpose of handling live stock arriving at or passing through said city, and being so engaged, and it becoming necessary for said cocomplainant, The Union Railroad Transfer and Stock Yard Company, to be provided with suitable and proper telegraphic facilities in connection with their said business, and to induce the said complainant, The Western Union Telegraph Company, to furnish the same, on the 8th day of August, 1877, entered into a contract with the said Western Union Telegraph Company, duly executed by both of the above-named companies, and which contract was to continue for and during the period of twenty-five years, a copy of which is marked Exhibit "A," and filed herewith and made a part of this their bill of complaint.

And the said complainants further aver that after the execution of the said contract the said Western Union Telegraph Com-
4 pany immediately entered upon the performance of the same and constructed the telegraphic lines and connections therein provided for, including the private line along and upon the lines of railroad of the said Union Railroad Transfer and Stock Yard Company, and connecting with the business of the said company in the manner prescribed in the said contract, and that in the execution thereof the said Western Union Telegraph Company incurred large expenses and laid out and expended the sum of two thousand seven hundred and eighty-four & $\frac{26}{100}$ ($2,784.26) dollars, and has since kept up and maintained the same at a large expense, to wit, the sum of five hundred and fifty-five ($555) dollars. The said Western Union Telegraph Company also furnished from that time forth, and still is furnishing, to the said Stock Yard Company, the telegraphic facilities provided for in said contract, which are of great value, to wit, of the value of four hundred and eighty ($480) dollars per annum; and said Western Union Telegraph Company also established an office in the building of the said Belt Railroad and Stock Yard Company, furnished to it by the said last-named company, and has maintained the same from that time hitherto, and still is maintaining it as an office, for the general transaction of telegraphic business, under and in pursuance of the terms and conditions of the said contract, and that said business is a valuable part of the business of the said
5 company, and has faithfully kept and maintained all the terms and conditions thereof to the entire satisfaction of the said Union Railroad Transfer and Stock Yard Company, and thereby then and there became vested with the exclusive right of way for telegraphic purposes over and upon the premises of the said Belt Railroad and Stock Yard Company at their said stock-yard grounds, and to the exclusive right of receiving and transmitting all messages that were to be received and transmitted from said grounds for any and all persons who might have occasion to use telegraphic means of communication.

Your orators, further complaining, charge that the said Baltimore and Ohio Telegraph Company has recently established lines of telegraphic communication at Indianapolis, in the said State of Indiana, with various lines in and out of the State operated by said company,

and is engaged in a general telegraphic business so far as said lines extend. But your orators charge that the said last-named company has never, as your orators are informed and believe, in any manner qualified itself for the transaction of business in the State of Indiana as a foreign corporation, and has not yet qualified itself by a compliance with the statutes of Indiana in such case made and provided; but, having so established itself in business, on more than one occasion its agents and employés have threatened to interfere with
6 the rights and privileges of your orator, The Western Union Telegraph Company, in the business of telegraphy carried on by it under and in pursuance of the contract aforesaid, and recently have set up and placed its poles from its connecting lines to the building of the said Stock Yark Company, located immediately southwest of the city of Indianapolis, and on the 14th day of this present month, the same being the Sabbath day, and taking advantage of that fact, the said company, through its agents aforesaid, entered upon the right of way of your orator, the said Western Union Telegraph Company, and the lands of your orator, the said Union Railroad Transfer and Stock Yark Company, and forcibly, and over the protest of the agents and employés of the last-named company have conducted and carried the wires of said Baltimore and Ohio Telegraph Company upon the poles so set up as aforesaid to and into the said building of the said Union Railroad Transfer and Stock Yard Company, the same being the building in which your orator, the Western Union Telegraph Company, has its office, and into a room in said building which had theretofore been verbally leased by the said Stock Yard Company to the Baltimore and Ohio Railroad Company for the transaction of its business in connection with the transportation and travel upon said railroad, and for no other purpose, and over the protests aforesaid have placed in said room the necessary apparatus, batteries, and tele-
7 graphic connections for the establishment of an office for the transaction of telegraphic business, and, as your orators are informed, are now proposing to engage in the said business over the protests aforesaid and in violation of the rights of your said orator, The Western Union Telegraph Company, and in violation of the contract between it and the said Union Railroad Transfer and Stock Yard Company; that the occupancy by the said Baltimore and Ohio Telegraph Company of the rights of way aforesaid by their said telegraph poles and wires, and of the said building and room, with their office fixtures, batteries, and telegraphic connections, is without any shadow of right whatever, and is greatly detrimental to the rights and interests of your said orators and each of them, and especially of your orator, The Western Union Telegraph Company, and will work an irreparable harm to its said business by diverting from it the said business of telegraphing for the public at said place if the same is not arrested by your honor by proper injunction and restraining order.

And your orator, The Western Union Telegraph Company, says that by reason of the foregoing wrongful acts of said Baltimore and Ohio Telegraph Company your orator is damaged in the sum of ten thousand dollars.

Wherefore and inasmuch as your orators are without adequate remedy for the injuries complained of at the common law
8 and can only be fully relieved and protected in a court of equity, where matters of this kind are properly cognizable, your orators pray that the said Baltimore and Ohio Telegraph Company may be made a defendant to this their bill of complaint and that a proper subpœna in chancery issue herein requiring the said defendant, by a day therein named, to answer the same and every part thereof as fully as if the same were here repeated in the form of distinct and separate interrogatories, and that on the final hearing of this bill the said Baltimore and Ohio Telegraph Company, the defendant aforesaid, its agents, and employes be forever enjoined from occupying or using the right of way aforesaid and the said office, batteries, and fixtures for the transmission of messages from said point, and in the meantime and inasmuch as the said defendant is now threatening to receive and transmit all telegraphic messages of a general character that may be tendered to or which they may be able to procure by solicitation from those who may have need to use at that point telegraphic lines of communication, and thus directly interfere with the business of your said orator, The Western Union Telegraph Company, that an interlocutory injunction issue pending this bill against The Baltimore and Ohio Telegraph Company, its officers, and agents, enjoining and prohibiting them from using said lines and wires so placed over and upon the right of way and lands aforesaid of the said complaining compa-
9 nies and the connecting lines and batteries in the said office for the purpose of transmitting telegraphic messages as aforesaid and for all other and proper relief in the premises consistent with equity and good conscience; and, as in duty bound, your orators will ever pray, &c.

THE WESTERN UNION TELEGRAPH COMPANY AND
THE BELT RAILROAD AND STOCK YARD COMPANY,
By McDONALD, BUTLER AND MASON,
Their Solicitors.

UNITED STATES OF AMERICA, }
District of Indiana, } ss:

Before the undersigned, clerk of the circuit court of the United States for the district of Indiana, on this day, personally appeared John F. Wallick, who, being duly sworn, upon his oath, says: That he is the superintendent of the sixth district, central division, of the Western Union Telegraph Company for the State of Indiana, and has charge of the chief office and its business connected therewith in said State of said company at Indianapolis, and that the matters and things set forth and charged in the foregoing bill of complaint by the said Western Union Telegraph Company and the Union Railroad Transfer and Stock Yard Company are true in substance and matters of fact; and further deponent saith not.

JNO. F. WALLICK.

Subscribed and sworn to before me, this 17th day of December, 1884.

NOBLE C. BUTLER, *Clerk.*

EXHIBIT A.

This agreement, made this eighth day of August, 1877, by and between The Western Union Telegraph Company, party of the first part, and The Union Railroad Transfer and Stock Yard Company (of the State of Indiana), party of the second part, witnesseth:

That whereas said party of the second part desires telegraphic facilities along its line of railroad extending to its office in the city of Indianapolis, and also desire provision made for its free telegraph business beyond the line of telegraph hereinafter provided for, and whereas the party of the first part desires the privilege of erecting a line or lines of poles along and on said second party's railroad right of way, and maintaining thereon its telegraphic wires and also the right to open and maintain public telegraph offices at one or more points on said second party's premises or land:

Now, therefore, for and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. The party of the first part agrees to furnish at its own proper cost and expense all the material and construct a line of poles and put up one or more wires on said line of railroad; after the poles and wires are put up as aforesaid said first party agrees to give to the said second party the exclusive use of one of the
11 wires on said poles and connect the same with the principal office of said party of the second part. The party of the first part further agrees to maintain said line and keep it in good condition and repair, and will also furnish the use of its main batteries for the successful working of said line, except during the time necessarily employed in cleaning said batteries.

Second. The said party of the first part will transmit free of charge messages on the business of the Union Railroad Transfer and Stock Yard Company, destined to or received from points off of the line herein provided for, to an amount not exceeding forty ($40) dollars per month, at the present regular day rates of said first party. For messages in excess of such amount in any one month the said first party will charge and the second party will pay one-half the regular tariff rates, settlements to be made monthly: Provided, however, that said first party shall not be called upon under the half-rate privilege hereby granted to transmit messages for less than its minimum tariff of twenty-five cents.

Third. The said second party hereby grants and agrees to assure to said first party, so far as it legally may, an exclusive right of way on and along the line and lands of said second party for the construction and use of telegraph lines for commercial and public uses or business, and said second party will not transport material for the construction of a line of telegraph in competition with
12 the lines of said first party, except at and for its regular local rates, nor will it furnish facilities or assistance that it may lawfully withhold for such competing lines: Provided, always, that in protecting or defending the exclusive grants conveyed by this clause the said first party may use the name of the second party,

but shall indemnify and save harmless the said second party from any and all costs, charges, or legal expenses incurred therein.

Fourth. The party of the second part agrees to furnish free of charge a suitable room for a public telegraph office for the said first party, in the principal business building or "Exchange" at its stock yards, and also in the hotel connected with the said stock yards.

Fifth. The said party of the second part agrees to transport free of charge all persons in the employ of said first party, when traveling on the business of said first party, as also all material for the construction, maintainance, repair, or reconstruction of the telegraph lines and wires herein provided for, and of the offices thereon.

Sixth. Whenever the party of the second part requires the exclusive use of more than one wire, as hereinbefore provided for, the said first party, on receiving sixty days' previous notice, will furnish such additional wire and will charge, and the second party hereby agrees to pay, the actual cost of the same.

Seventh. It is mutually understood and agreed that the telegraph line or wires covered by this contract shall form part of the
13 general telegraph system of the party of the first part, and as such in the department of commercial or public business shall be controlled and regulated by it, said party of the first part fixing and determining all tariffs for the transmission of messages and all connections with other lines.

Eighth. It is a condition of this contract that the party of the second part is not to be responsible for any injury to persons in the employ of said first party carried free by said second party under this agreement; nor shall said second party be held liable to any person doing business with said first party for any neglect or failure in the transmission or delivery of messages or on account of any other public telegraph business; and said first party shall not be responsible for any error or failure in the transmission or delivery of messages sent free for said second party under this agreement.

Ninth. This contract shall continue in force for the term of twenty-five years from the first day of September, 1877, and, in case of any disagreement concerning the true intent and meaning of said provisions, the subject of such difference shall be referred to three arbitrators, one chosen by each party and the third by the two other chosen, and the decision of such arbitrators, or the majority thereof, shall be final and conclusive.

In witness whereof the parties to these presents have caused the name of their respective presidents to be hereunto subscribed
14 and their corporate seals to be attested the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,
By WILLIAM ORTON, *President.*
A. R. BREWER, *Sec'y.*

UNION RAILROAD TRANSFER AND STOCK YARD COMPANY,
By W. R. McKEEN, *President.*
E. F. CLAYPOOL, *Sec'y.*

And thereupon there issued out of the office of the clerk of said court a subpœna in chancery in the above-entitled cause in the words following, to wit:

UNITED STATES OF AMERICA, *District of Indiana:*

The President of the United States of America to the marshal of the district of Indiana, Greeting:

You are hereby commanded to summon the Baltimore and Ohio Telegraph Company, citizen of and resident in the State of Indiana, if it be found in your district, to be and appear in the circuit court of the United States for the district of Indiana aforesaid, at Indianapolis, on the first Monday in February next, to answer a certain bill in chancery filed and exhibited in said court against it by the Western Union Telegraph Company and the Union Railroad Transfer and Stock Yard Company, now known by the name and style of the Belt Railroad and Stock Yard Company, citizens of and residents in the States of New York and Indiana. Hereof they
15 are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 17th day of December, 1884, and in the one hundred and ninth year of the Independence of the United States of America.

Attest: [SEAL.] NOBLE C. BUTLER, *Clerk.*

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of February, 1885; otherwise, the said bill may be taken *pro confesso.*

NOBLE C. BUTLER, *Clerk.*

And afterwards, to wit, on the 24th day of December, 1884, said subpœna was returned into said clerk's office with the following return endorsed thereon, to wit:

DISTRICT OF INDIANA:

I received this writ at Indianapolis, in said district, at — o'clock — m., December 9th, 1884, and served the same as follows: At Indianapolis, December 17th, 1884, on the Baltimore and Ohio Telegraph Company by reading it [to] Duncan T. Bacon, manager of said company, and by handing him a copy of the same. Said Bacon is the highest officer or agent of said company found in my district.

ROB'T S. FOSTER,
U. S. Marshal,
By A. G. HART, *Deputy.*

And afterwards, to wit, at the November term of said court, on the 3d day of January, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceed-
16 ings in the above-entitled cause were had, to wit:

Comes now the defendant, by Harrison, Miller, and Elam,

its solicitors, and files its answer herein in the words following, to wit:

The defendant, The Baltimore and Ohio Telegraph Company, saving and reserving unto itself all manner of benefit of exception to the many insufficiencies and defects in the said bill of complaint set forth, for answer thereunto or unto so much thereof as is material to be answered, says:

It admits that the said Western Union Telegraph Company is a corporation of the State of New York, and that the said Belt Railroad and Stock Yard Company is a corporation of the State of Indiana, and that this defendant is a corporation of the State of Maryland.

That the said complainant telegraph company is, and for many years last past has been, as alleged, engaged in the business of telegraphy, as in said bill set forth, and that it did, at the date set out in said bill, enter into the contract exhibited in said bill with said Railroad and Stock Yard Company, and that subsequently the said Western Union Telegraph Company did construct its lines of telegraph along the right of way of said railroad company and upon its grounds, but as to the expense incurred by said telegraph company in the premises, either in the original construction or in subsequent outlays, this defendant is not advised and therefore admits
17 nothing; nor is this defendant advised as to the value of the facilities afforded by said Western Union Telegraph Company to said Railroad and Stock Yard Company per annum; but this defendant is informed and believes, and therefore avers the fact to be, that said Western Union Telegraph Company has, since said contract was entered into, received revenues in the use of said lines vastly in excess of all outlays and expenses incurred in the premises.

This defendant further admits and avers that it is a telegraphic company engaged in the general business of telegraphing for the public in the State of Indiana and throughout the United States, having its offices in all the principal cities of the United States east of the Mississippi river, and that as such telegraph company it is a competitor of the said complainant, Western Union Telegraph Co., for the commercial and general business of the country; that its lines extend into the city of Indianapolis and it has there established an office and is engaged in its said business; and it further admits that it has recently set up and placed its poles and its connecting lines to the building of the said Stock Yard Company, located immediately southwest of the city of Indianapolis, and that it did, on the 14th day of December, 1884, put up and carry its wires upon the poles set up as aforesaid to and into the building of the said Union Railroad Transfer and Stock Yard Company, being the same building in which the complainant, the Western Union
18 Telegraph Company, has its office, and into a room in said building which had theretofore been leased by the said Stock Yard Company to the Baltimore and Ohio railroad for the transaction of its business in connection with said Stock Yard Co. and the said Belt railroad and other railroads centering at that point, and all business properly connected with the business of a railroad office at

that point. But this defendant denies that said wires were so carried in or office established by force or violence in any manner whatever, and it denies that the same was done under the protest of the said Belt Railroad and Stock Yard Co., but avers the fact to be that said Belt Railroad and Stock Yard Co., is not now resisting or opposing the establishment of said line by this defendant and the occupation of said office for telegraphic purposes and the maintenance of this defendant's office at said point, except only and in so far as it is compelled so to do by the terms of said contract set out in said complaint, and the use of the name of the said Belt Railroad and Stock Yard Co. in this suit is a nominal use only by said Western Union Telegraph Co. under and in accordance with the provisions of said contract.

This defendant further says that said Baltimore and Ohio Telegraph Co. has its lines extending along the railroad of said Baltimore and Ohio railroad, which is one of the great thoroughfares and railroad arteries extending from the seaboard to Cincinnati, and thence to the far West by its connecting lines, including
19 among its said connections said city of Indianapolis, and that the only lines of telegraph extending along said Baltimore and Ohio railroad are the lines of this defendant company, and that it is essential to the safest, best, and most successful transaction of the business of the office of the said Baltimore and Ohio Railroad Company and its said stock agent at the stock yards aforesaid that said office shall have immediate connection with the lines of telegraph of the said Baltimore and Ohio railroad and its principal offices and officers for immediate hourly communication in the transaction of its business, and that such communication is not less important to the general public than to the said Baltimore and Ohio Railroad Company and its agents.

This defendant further says that said Union Railroad Transfer and Stock Yard Co. is a public corporation, organized and existing under and by virtue of the laws of the State of Indiana, authorized to take property by the right of eminent domain, and said railroad is, by the laws of Congress of the United States, a postal route for the transmission of mails; that said corporation, at the time of its organization in 1877, asked and obtained aid from the city of Indianapolis upon the ground that the establishment of such enterprise, including said stock yards, would be of great advantage to the general public by creating a great mart of trade for stock in the immediate neighborhood of Indianapolis, and would thereby be
20 of great public advantage to said city, and by reason of such representations the said city of Indianapolis did loan its credit to said corporation to the extent of five hundred thousand dollars, and did to that extent issue its bonds, which were sold and the proceeds received by said corporation and used in the establishment and construction of its said stock yards and railroad, and that said money has never been repaid to said city; all of which will more fully and at large appear by reference to the ordinance of the city of Indianapolis, entitled "An ordinance providing for the issuing of certain bonds in aid of the Union Railroad Transfer and

Stock Yard Company," and prescribing the conditions on which said bonds are issued and delivered, in force October 16th, 1876, with the acceptance of said ordinance by said company and the various modifications thereof, as said ordinance, acceptance, and modifications appear upon pages 276 to 285, inclusive, of the statutes and ordinances of the city of Indianapolis, published in 1883, which ordinance, acceptance, and modifications this defendant prays may, by reference, be made and considered as a part of this answer, and also by the act of the Legislature of the State of Indiana legalizing said ordinance, approved March 2nd, 1877.

This defendant further says that, by reason of the aid thus given to said enterprise by the said city of Indianapolis, the said railroad was enabled to be built and said stock yards established, and a very extensive business has been built up at said stock yards, and
21 a building has been erected thereon by said Railroad and Stock Yard Company, for rent to the various parties dealing in stock and to the various railroads of the country desiring to occupy offices at said place, for the purpose of soliciting shipments of stock and looking to the general interests of said railroad companies at said point, and that among other railroad corporations to whom offices in said building have been thus rented is the Baltimore and Ohio Railroad Co., as aforesaid.

And this defendant further says that the business so transacted at said stock yards consists of the daily receipts, sales, and shipments of very large numbers of hogs, cattle, sheep, and horses, often amounting to many thousand head per day, and that a very large mart of trade has thus been established at that point, and a vast telegraphic business has arisen and is necessary to the transaction of said business, and that it is important, not only to the interests of said Baltimore and Ohio railroad and its connections that it be permitted to have telegraphic connection at that point in the management of its business, but that it is of vast moment to the parties interested in trade at that point and to the general public that there be competition in telegraphing, and that there be no discrimination between the companies engaged in doing such telegraphic business on the part of said Belt Railroad Company, but that the same be free and fair to all companies in precisely the same way and to the
22 same extent, as the business of the several railroads at that point is free and untrammeled.

This defendant further avers that the operation of lines of telegraph in connection with the business of a railroad company is just as essentially a part of its business as railroads are conducted and operated throughout the United States as is the running of locomotives, and that it is utterly ruinous to the business of any railroad company that its telegraphic business shall be under the control or supervision of a hostile telegraph company; and this defendant avers that said Western Union Telegraph Company, by reason of the fact that the Baltimore and Ohio Railroad Company has caused to be established and is assisting in maintaining along its railroad lines and connections, so far as possible, a new and novel system of telegraphy through the Baltimore and Ohio Telegraph Co., is hostile

both to said railroad company and to said telegraph company and only in so far as compelled so to do will grant to it any facilities whatever, and will not grant such facilities upon the same terms and conditions as are granted to other railroad companies. On the contrary the said Western Union Telegraph Company upon all business of the said Baltimore and Ohio Railroad Company passing over the lines of this defendant company, and upon all business of every nature and description passing over the lines of this defendant company
23 makes an extra charge over and above that which it charges to other customers sending messages over its said lines, and thereby discriminates against this defendant and against its customers; that such discrimination is made by charging upon every such message received from this defendant for transmission over the lines of said complainant company for five words not a part of said message at all, and not at all necessary to be repeated, and not necessary to be transmitted in said message, said words being "By Baltimore and Ohio Telegraph."

And this defendant alleges that the putting of such five words in said message and the charging for them is simply a device for making a discrimination against this defendant and not otherwise.

This defendant further alleges that it, the said Baltimore and Ohio Telegraph Company, has accepted the provisions of the act of Congress of the United States, approved July 24th, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes," and has thereby entitled itself to all the rights and privileges resulting from such acceptance.

This defendant further alleges that it has complied with the statutes of the State of Indiana which require a foreign corporation doing business in any county in this State to file the evidence of authority of its agent, and the resolution of its board of directors authorizing service of process to be made upon such agent,
24 and providing that such service shall be valid, etc., in the office of the clerk of the circuit court of the county in which such agent is acting, by filing in the office of the clerk of the Marion circuit court, such power of attorney and resolution, and by such filing stands as to the transaction of business in said county of Marion upon equal footing with the said complainant, the Western Union Telegraph Company.

Further answering, this defendant says that prior to the establishment by the aid of the city of Indianapolis as aforesaid of said stock yards by said Union Railway Transfer and Stock Yards Company, stock yards of greater or less capacity, and doing a greater or less business in the receiving and shipment of stock, and in the yarding and caring for the same while the same was being bought and sold at and about said city of Indianapolis, were maintained by various railroads and in different places at and about the city, thereby making markets for such stock business and places for the shipment and reshipment of such stock, and for the unloading and caring for the same, but that after said city furnished said aid to said Union Railway Transfer and Stock Yards Company, and said union yards were established, all other such stock yards were aban-

doned, and since that time the said complainant stock yard company has had and maintained a complete monopoly of said business at and about said city of Indianapolis, and there is no
25 other place at and about said city where such business of shipping, handling, and caring for stock being bought, sold, shipped, and transhipped is done or can be done for the benefit of the general public and has not been since that time.

This defendant, further answering, says that before entering upon the grounds of said complainant Railway and Stock Yard Company for the purpose of setting up its said line of telegraph, this defendant approached the auditor and general superintendent of said stock yards, having charge of all the business of said company at that point, and sought to negotiate with him for the obtaining of the right of way for so constructing said line and for the right to use and maintain its said line in the premises, and this defendant was then and there ready and prepared to pay any reasonable sum which might be fixed for such right, but said officer of said complainant Railroad and Stock Yard Company declined to negotiate at all in the premises or to at all consider the proposition, upon the ground distinctly stated that said company had entered into the contract set out in the complainant's bill, and under the terms thereof was not at liberty to grant to this defendant any rights whatever in the premises.

And this defendant further avers that thereafter, and not before, this defendant did set up its line as aforesaid; that in so doing it has placed two poles upon the right of way of said railroad company, one pole at or about the gravel pit of said company,
26 two poles in the field belonging to said Railroad and Stock Yard Company north of the stock yards, and one pole in the road or way opened and established by said company near its principal building at said stock yards and dedicated and thrown open by it as a public highway. And this defendant avers that no one of said poles is so placed as in any way to intefere with the business of either the complainant telegraph company or said railroad and stock yards company, but are so placed as not in any way to bring the lines or poles of this defendant in contact with or near the lines or poles of the complainant telegraph company, or in any way to interfere with or damage the property of either of said complainants in the premises, except in so far as the setting up of said poles upon the premises of said railroad and stock yards company may as a matter of law constitute a case for nominal damages.

And this defendant further says that it has been at all times, and is now, ready, willing, and offering to pay any sum that shall be fixed as a compensation to said railroad and stock yards company for such damages or for the use of such right of way, and it is now here in open court tendering said payment of the same so soon as the amount shall be fixed either by said company or by this honorable court.

And having fully answered said bill this defendant prays that it be hence discharged with its costs.

THE BALTIMORE AND OHIO TELEGRAPH CO.,
By HARRISON, MILLER AND ELAM.

27 STATE OF INDIANA, } ss:
Marion County, }

Duncan T. Bacon, being sworn, says the allegations of the foregoing answer are true, as he verily believes.

DUNCAN T. BACON.

Subscribed and sworn to before me this 22nd day of December, 1884.

[SEAL.] HOWARD CALE,
Notary Public in and for Marion County, State of Indiana.

And afterwards, to wit, at the November term of said court, on the 11th day of February, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties in the above-entitled cause, by counsel, into open court and upon the bill filed herein by complainants and the answer thereto filed herein by the defendant, said bill and answer being each duly verified, the complainants move the court for a temporary restraining order as prayed in their said bill, and the court having heard the argument of counsel upon said motion, and being fully advised in the premises, does now overrule said motion.

And afterwards, to wit, at the May term of said court, on the 8th day of May, 1885, before the Honorable William A. Woods,
28 judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by counsel, and upon their motion leave is granted them to file an amended bill herein.

And afterwards, to wit, at the May term of said court, on the 31st day of July, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants and file their joint and several replication to the answer of the defendant in the words following, to wit:

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for joint and several replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

McDONALD, BUTLER AND MASON,
Solicitors for Complainants.

29 And this cause now coming on for final hearing on bill, answer, and replication, the court finds that the equities are with the defendant.

It is, therefore, ordered, adjudged, and decreed that the bill of complaint be, and the same is hereby, dismissed for want of equity; and that the defendant recover from the complainants its costs and charges in this behalf laid out and expended, taxed at $———.

And thereupon the complainants, in open court, respectively pray an appeal to the Supreme Court of the United States, which is hereby granted upon their filing bond in the sum of $250, with sufficient surety, to be approved by the court.

And thereupon said complainants now file their bond herein in the sum of $250, with Harry C. Sickels as surety thereon, which is approved by the court.

30 The United States of America to The Baltimore & Ohio Telegraph Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal granted by the circuit court of the United States for the 7th circuit and district of Indiana, wherein The Western Union Telegraph Company and The Union Railroad Transfer & Stock Yard Company, now known by the name and style of The Belt Railroad & Stock Yard Company, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana, this 31st day of July, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of Circuit Court of the United States, District of Indiana.]

WILLIAM A. WOODS,
Dist. Judge.

We hereby acknowledge service of the above citation, this 31st day of July, 1883.

HARRISON, MILLER & ELAM,
Att'y- for Appellee.

31 DISTRICT OF INDIANA:

I Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the proceedings had in said court in the cause of The Western Union Telegraph Company *et al. vs.* The Baltimore and Ohio Telegraph Company, No. 7893, as fully as the same appears of record and remains upon file in my office.

Witness my hand and the seal of said court, this 4th day of August, A. D. 1885.

[Seal of Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

DISTRICT OF INDIANA:

I, William A. Woods, judge of the district court of the United States for said district, do certify that at the date of the foregoing certificate Noble C. Butler was and now is the clerk of the circuit court of the United States for said district, and that his attestation aforesaid is in due form of law.

Witness my hand, this 4th day of August, 1885.

WILLIAM A. WOODS, *Judge.*

32 [Endorsed:] No. ——. In the Supreme Court of the United States. The Western Union Telegraph Company *et al v.* The Baltimore and Ohio Telegraph Company. Transcript on appeal. McDonald, Butler & Mason, solicitors for appellant.

Endorsed on cover: Indiana C. C. U. S. No. 927. The Western Union Telegraph Company *et al.*, appellants, *vs.* The Baltimore & Ohio Telegraph Company. Filed September 3, 1885.